Supreme Court, U.S.
FILED

NO. _____ 98 1795 MAR 30 1999

IN THE

SUPREME COURT of the UNITED STATES

October Term, 1998

MARTE A. MARTINEZ
Petitioner

VS.

CITY OF LOS FRESNOS, TEXAS
Respondent

On Petition For Writ of Certiorari to the Thirteenth Court of Appeals Corpus Christi, Texas.

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39pp

QUESTIONS PRESENTED FOR REVIEW

(1) WHETHER THE RULING BY THE TRIAL COURT AND THE TEXAS COURT OF APPEALS VIOLATED PETITIONER'S DUE PROCESS RIGHTS GUARANTEED UNDER THE FOURTEENTH AMENDMENT BY RULING THAT RESPONDENT, THE CITY OF LOS FRESNOS, TEXAS, WAS ENTITLED TO AN AWARD OF ATTORNEYS FEES IN A CONDEMNATION SUIT WHICH WAS LOST BY THE RESPONDENT. TEXAS LAW DID NOT AUTHORIZE THE AWARD OF ATTORNEYS FEES TO THE RESPONDENT IN THIS CASE AND THEREFORE, THE TRIAL COURT WAS ARBITRARILY AWARDING ATTORNEYS FEES IN VIOLATION OF THE FOURTEENTH AMENDMENT. SEE U.S. CONST. AMEND. 5 AND 14.

(2) WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONER WAIVED HIS CHALLENGE TO THE AWARD OF ATTORNEYS FEES TO THE RESPONDENT UNDER THE TRIAL COURT'S JUDGMENT BECAUSE THE PETITIONER DID NOT VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WAIVE SUCH RIGHTS AND THEREFORE, DUE PROCESS CONSTITUTIONAL CHALLENGES SUCH AS THIS MAY BE RAISED FOR THE FIRST TIME ON APPEAL.

LIST OF ALL PARTIES

Marte A. Martinez, Petitioner

City of Los Fresnos, Texas, Respondent

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TABLE OF AUTHORITIES

Cases:

City of El Paso v. Madero Development, 803 S. W. 2d 396 (Tex.App-El Paso 1991, writ denied), cert. denied 112 S. Ct. 970

Mobil Oil Corporation v. Matagorda Drainage District No.3, 580 S.W.2d 634 (Tex. Civ. App.-Corpus Christi 1979), reversed on the grounds, 597 S.W.2d 910 (Tex. 1980)

D. H. Overmyer Co., Inc. v. Frick Company, 405 U.S. 174 (1972)

Shelley v. Kraemer, 334 U.S. 1 (1948)

Constitution, Statutes, and Rules:

United States Constitution,
Fourteenth Amendment

Texas Constitution, Article 1, §19

28 U.S.C. §1257

Texas Property Code, Section 21.047

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

NO. _____

MARTE A. MARTINEZ

Petitioner

VS.

CITY OF LOS FRESNOS, TEXAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT SEEKING REVERSAL OF THE THIRTEENTH TEXAS COURT OF APPEALS SITTING AT CORPUS CHRISTI, TEXAS

Marte A. Martinez petitions for a writ of certiorari to review the judgment of the Texas Court of Appeals, Thirteenth Judicial District, sitting at Corpus Christi, Texas. The Texas Supreme Court has denied Petitioner's Petition for Review:

OPINIONS BELOW

The opinion of the Thirteenth Court of Appeals (App. A, infra), is an unpublished case. The Judgement of the Thirteenth Court of Appeals (App. B, infra), was entered on June 25, 1998. Petitioner then filed a Motion for Rehearing with the Court of Appeals which was overruled on August 6, 1998, (App. C, infra). Petitioner then filed a Petition for Review with the Texas Supreme Court which was "denied" on November 5, 1998, (App. D, infra). Petitioner then filed a Motion for Rehearing with the Texas Supreme Court which was "overruled" on December 31, 1998, (App. E, infra). The final Amended Judgement of the trial court, (the County Court at Law No. 2 of Cameron County, Texas), was signed for entry on November 13, 1996, (App. F, infra). The charge of said trial court to the jury and the jury's findings were entered by the trial court on June 27, 1995, (App. G, infra)

JURISDICTION

The United States Supreme Court has jurisdiction over this case under 28 U.S.C. § 1257 because the Texas Supreme Court has denied review of a judgment by the Thirteenth Texas Court of Appeals which results in a depravation of the Petitioner's due process rights guaranteed under the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

This petition for a writ of certiorari involves the Fourteenth Amendment to the United States Constitution which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis added).

STATEMENT OF THE CASE

This case was a eminent domain/condemnation case in which Respondent, the City of Los Fresnos, Texas, condemned for public purposes certain real estate owned by Petitioner, Marte A. Martinez. The trial court appointed a panēl of commissioners in accordance with Texas law who filed with the trial court an evaluation that the property at issue had a fair market value of $27,500.00. Petitioner filed timely objections to the commissioners' findings and the trial court set the issue of property valuation for trial by jury.

At the conclusion of the trial, the jury found that the property at issue had a fair market value of $56,000.00 and that the reasonable attorneys fees for the Respondent were $11,340.00, (App. G, infra).[1] In other words, the jury agreed with the Petitioner's argument as to the value of the real property at issue and disagreed with the Respondent's arguments. Pursuant to the jury's findings, the Court awarded the Petitioner a judgement for $56,000.00 representing the fair market value of Petitioner's said real estate but also awarded the Respondent $11,340.00 representing its reasonable attorneys fees, (App. F, infra).

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[1] The jury also found that Petitioner's reasonable attorneys fees were $10,500.00.

It was Petitioner's position that as a matter of Texas law, Respondent was not entitled to a recovery of attorneys fees under any statute, court rule, or common law precedent.[2]

Without filing a motion for new trial or any other motion in the trial court to challenge the trial court's final amended judgment,3 the Petitioner appealed the trial court's final amended judgement of November 13, 1996, (App. F, infra), to the Texas Court of Appeals arguing that there was no legal authority for the trial court to grant the Respondent its award of reasonable attorneys fees. On June 25, 1998, the Court of Appeals ruled that the Petitioner waived its argument that the Respondent should not have been awarded judgment for $11,340.00 in attorneys fees because the Petitioner failed to attack the Respondent's award of attorneys fees by and through a motion for new trial or by a motion to adjudge costs in the trial court, (App. A, infra).[4]

On July 10, 1998, the Petitioner filed with the Texas Court of

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[2]Texas Property Code, Section 21.047, only permits the prevailing party in such a controversy to recovery attorneys fees and Petitioner prevailed at trial.

[3]The trial court entered three separate judgments between June 27, 1995, the date of trial, and November 13, 1996, the date the trial court entered its last Amended Judgment.

[4]The Court of Appeals agreed with the Petitioner that Section 21.047 (a) of the Texas Property Code Ann. (which deals with attorneys fees and costs in condemnation cases), did not authorize the Respondent to recover any of its attorneys fees or costs but noted that the Petitioner failed to raise proper objections at the trial court level to allow the trial court to correct such error. Accordingly, the Court of Appeals ruled that such error was waived by the Petitioner, (see App. A, infra).

Appeals a Motion for Rehearing arguing that when a court grants relief not authorized by any statute, court rule, or by common law, that such error is "fundamental error" which can be raised on appeal for the first time. Further, Petitioner argued that the trial court has no jurisdiction to grant relief outside the bounds of law.[5] The Petitioner further argued that an award of attorneys fees to the Respondent which was not authorized by any statute, court rule, or by common law, was a violation of the Petitioner's due process rights under both the Texas and United States Constitutions.[6] This motion was overruled by the Court of Appeals on August 6, 1998, (App. C, infra).

The Petitioner then filed with the Texas Supreme Court his Petition for Review which again made these same arguments that an award of attorneys fees to the Respondent not authorized by any statute, court rule, or by common law, that such error was "fundamental error" which can be raised on appeal for the first time, and that the trial court had no jurisdiction to grant the Respondent its attorneys fees because such relief was outside the bounds of law. The Petitioner

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[5]The Petitioner cited the following authorities:
City of El Paso v. Madero Development, 803 S.W. 396,399 (Tex.App.-El Paso 1991, writ denied, cert. denied 112 S.Ct. 970); and **Mobil Oil Corporation v. Matagorda County Drainage District No. 3**, 580 S.W.2d 634 (Tex.Civ.App.-Corpus Christi 1979), reversed on other grounds, 597 S.W.2d 910 (Tex. 1980), for the proposition that in Texas, there are three jurisdictional elements: (1) jurisdiction over the subject matter; (2) jurisdiction over the person or res, and (3) power to render the particular relief awarded. (emphasis added) Petitioner argued that the trial court did not have jurisdictional power to render relief not authorized by law.

[6]Along with the Fourteenth Amendment to the United States Constitution, Petitioner also cited Texas Constitution, Art. 1, §19, which reads: "No citizen of this state shall be deprived of...property...except by due course of law."

further reasserted its argument to the Texas Supreme Court that an award of attorneys fees to the Respondent which was not authorized by any statute, court rule, or by common law, was a violation of the Petitioner's due process rights under both the Texas and United States Constitutions. The Supreme Court of Texas "denied" Petitioner's Petition for Review on November 5, 1998, (App. D, infra). Petitioner then filed his motion for rehearing with the Texas Supreme Court on or about November 20, 1998 reasserting these same arguments and Petitioner's Motion for Rehearing was "overruled" by the Texas Supreme Court on December 31, 1998, (App. E. infra).

The Petitioner maintains in this Petition for Writ of Certiorari that when a state trial court awards relief (i.e. attorneys fees) against an individual and that such relief is not authorized by any law, (statute, court rule or common law), that such action by the state court violates the due process provisions of the Fourteenth Amendment and that such error may be raised for the first time on appeal.

REASONS FOR GRANTING THE PETITION

In this case, the award of attorneys fees at issue to the Respondent was outside of the constitutional or legal powers of the court. As a matter of constitutional law, a court may only provide remedies to litigants which are authorized under law. The Fourteenth Amendment to the United States Constitution reads, in part, as follows:"...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[7] Petitioner maintains that under its most basic meaning, the due process clause guarantees that a court will exercise

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[7] Also see Tex. Const., Art. 1, §19, which reads: "No citizen of this state shall be deprived of...property... except by due course of law.

its jurisdictional powers within the confines of law. To do otherwise would subject citizens of this nation to a lawless and arbitrary court system. It is a Petitioner's contention that the due process clause within the Fourteenth Amendment was designed to prevent citizens from arbitrary and capricious judicial actions.

It is a well settled proposition of constitutional law that a decree of a state court is 'state' action for purposes of the Fourteenth Amendment. **Shelley v. Kraemer**, 334 U.S. 1 (1948). Accordingly, a state court judgment is 'state' action Fourteenth Amendment purposes.

A trial court cannot be exercising due process of law when there is no law which it is relying upon. There currently appears to be no United States Supreme Court decision which discusses the issue of whether a trial court violates the due process clause of the Fourteenth Amendment when it awards civil relief not authorized by law. The question for the United States Supreme Court in this case is whether a litigant's due process rights are violated when a trial court awards relief against the litigant which is not authorized by any law?[8]

Additionally, the United States Supreme Court is presented with the question of whether the Petitioner in this case waived his due process point of error by not raising the same in the trial court? It is well settled that due process rights cannot be waived unless such rights are voluntarily, knowingly, and intelligently waived. **D.H. Overmeyer Co., Inc. v. Frick Company**, 405 U.S. 174 (1972). No procedural rule specifically required that the Petitioner file additional motions in the trial

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[8] The Texas Court of Appeals noted in its opinion (App.A, infra), that there were no legal grounds for the award of attorneys fees to the City of Los Fresnos, Texas. It reasoned its upholding of the award by stating that the Petitioner waived his right to challenge the award of attorneys fees.

court. It is obvious that Petitioner through that such points of error were preserved by the mere fact that he appealed the same to the Court of Appeals complaining that the trial court did not have the legal right to award the Respondent attorneys fees. Accordingly, there is no possible argument that the Petitioner voluntarily, knowingly, and intelligently waived his due process rights when he filed an appeal with the Court of Appeals seeking to reverse the award of attorneys fees to the Respondent. Therefore, this case should be reviewed by the United States Supreme Court on these issues.

CONCLUSION

This Petitioner for Writ of Certiorari should be granted because Petitioner, Marte A. Martinez, was denied his due process rights when the Court of Appeals ruled that he had waived his complaints about attorneys fees being granted against him even though the Court of Appeals acknowledged that there was no legal authority for the trial court to grant such attorneys fees. The Petitioner did not knowingly, intentionally, or intelligently waive such rights. Accordingly, the Petitioner respectfully requests that the United States Supreme Court GRANT Petitioner's Petition for Writ of Certiorari and reverse the previous judgment of the Court of Appeals and remand this case back to the Texas Court of Appeals for further proceedings consistent with the ruling of the United States Supreme Court or render a decision that the Respondent take nothing of and from the Petitioner and that all costs of this case be assessed against the Respondent, the City of Los Fresnos.

Respectfully submitted,

William Kimball*
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(956) 425-2000
Fax No. (956) 421-4258
Counsel for Petitioners

*Counsel of Record

APPENDICES

APPENDIX A

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI

NUMBER 13-97-003-CV

==========

MARTE A. MARTINEZ,
Appellant,

V.

CITY OF LOS FRESNOS, TEXAS
Appellee.

June 25, 1998

On appeal from the County Court at Law No. 2 of Cameron County, Texas.

O P I N I O N

Before Justices Dorsey, Hinojosa, and Rodriguez
Opinion by Justice Dorsey

This is an appeal of a condemnation award. Appellant, Marte A. Martinez, complains only of those portions of the judgment that assess costs against him and award attorney fees to appellee, City of Los Fresnos. By point one he attacks the award of attorney fees to the City, and by point two assessment of costs. We hold any error has been waived and affirm.

The city of Los Fresnos, Texas sued Marte A. Martinez to condemn seven acres of land pursuant to its eminent-domain power. Martinez answered by a general denial and made an affirmative request for attorney fees and costs. The trial court appointed three special commissioners who determined the property had a market value of $27,500. The trial court entered an order adopting the commissioners's finding. Martinez filed objections[1] to the commissioners's award, and the trial court set the case for a jury trial.

The trial court submitted three special questions to the jury. Question one asked, "What sum of money if any, do you find from a preponderance of the evidence represents the market value of the property in question". The jury answered $56,000. Question two asked, "What is the reasonable fee for the necessary services of the attorney for City of Los Fresnos, R. B. Hunsaker, stated in dollars and cents." The jury answered $11,340. Question three asked, "What is the reasonable fee for the necessary services of the attorney for Marte A. Martinez, F. T. Graham, stated in dollars and cents." The jury answered $10,500.

The trial court entered a judgment showing the City was legally entitled to condemn the property upon depositing $56,000 payable to Martinez into the court's registry. The court allowed Martinez and the City to recover the attorney fees awarded in questions two and three. The Court ordered Martinez to recover $10,500 in attorney fees from the City and the City to recover $11,340 in attorney fees from Martinez. The judgment provided "[a]ll costs herein are ADJUDGED against the party incurring the same."

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[1] Section 21.018(b) of the property code states: "If a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil cases." TEX. PROP. CODE ANN. §21.018(b) (Vernon 1984).

By point two Martinez asserts the trial court erred because it assessed costs against him. Section 21.047 of the Texas Property Code provides:

(a) Special commissioners may adjudge the costs of an eminent domain proceeding against any party. If the commissioners award greater damages than the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages that the commissioners awarded, the condemnor shall pay all costs. If the commissioners' award or the court's determination of the damages is less than or equal to the amount the condemnor offered before proceedings began, the property owner shall pay the costs.

(b) A condemnor shall pay the initial cost of serving a property owner with notice of a condemnation proceeding. If the property owner is ordered to pay the costs of the proceeding, the condemnor may recover the expense of notice from the property owner as part of the costs.

(c) A court that has jurisdiction of an eminent domain proceeding may tax $10 or more as a reasonable fee for each special commissioner as part of the court costs of the proceeding.

TEX. PROP. CODE ANN. § 21.047(a) (Vernon 1984). According to the text of section 21.047(a) the amount the property owner finally recovered as damages determines the issue of adjudging costs. If the property owner finally recovered more than the condemnor's offer, whether by the administrative award of the special commissioners or the judgment of the trial court, then "the condemnor shall pay all costs," but if the award of the commissioners or the trial court, whichever is final, is equal to or less than the amount of the condemnor's offer, "the property owner shall pay the costs." TEX. PROP. CODE ANN. §21.047(a) (Vernon 1984). See State v. Schmidt, 894 S.W.2d. 543, 545 (Tex.App.--Austin 1995, no writ).

In this case Martinez recovered more than the special commissioners awarded. According to section 21.047(a) the City, the condemnor, should pay the costs. However the judgement stated "[a]ll costs herein are ADJUDGED against the party incurring the same." Martinez did not complain in a motion for a new trial of the court's award of costs, nor did he file a motion to adjudge costs.[2] He could have presented some type of objection to the trial court to allow it to correct its error, but, the record, does not reflect he did so. We hold Martinez failed to preserve this complaint for appellate review.

See TEX. R. App. P. 33.1(a); *Harris v. Christianson-Keithley Co.*, 303 S.W.2d 422, 431 (Tex. Civ. App.--Galveston 1957, writ ref'd n.r.e.); Barker v. Weingarten Riverside Co., 232 S.W.wd 692, 696 (Tex Civ. App.--Beaumont 1950, writ ref'd n.r.e. We overrule point two.

By point one Martinez asserts the trial court erred in awarding attorney fees to the city. We find no legal authority for the award of attorney fees to either party under the circumstances; however, Martinez did not raise the issue until appeal. We hold Martinez did not preserve error for appellate review. *See* TEX. R. App P. 33.1(a); *National Environmental Servs. Co. v. Homeplace Homes, Inc.*, 961 S.W.2d 632, 635 (Tex. App.--San Antonio 1998, no writ); *Bowles v. Reed*, 913 S.W.2d 652, 662 (Tex. App.--Waco 1995, writ denied); *Gulf Ins. Co. v. Vantage Properties, Inc.*, 858 S.W.2d 52, 55 (Tex. App.--Houston [14th Dist.] 1993, writ denied). We overrule point one.

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[2] A motion to adjudge costs involves an assessment by the court concerning who shall pay the costs, *City of Ingleside vs. Stewart*, 554 S.W.2d 939, 948 (Tex. Civ. App.--Corpus Christi 1977, writ ref'd n.r.e.).

We AFFIRM the judgement.

/S/
J. BONNER DORSEY,
Justice

Do not publish.
Tex. R. App. P. 47.3(b).

Opinion delivered and filed on
this 25th day of June, 1998.

APPENDIX B

COURT OF APPEALS

Thirteenth Judicial District

Corpus Christi, Texas

Below is the JUDGMENT in the numbered cause set out herein to be Filed and Entered in the Minutes of the Court of Appeals, Thirteenth Judicial District of Texas, at Corpus Christi, as of the 25th day of June, 1998. If this judgment does not conform to the opinion handed down by the Court in this cause, any party may file a motion for Correction of Judgment with the Clerk of this Court.

CAUSE NO. 13-97-003-CV

(Tr. Ct. No. 1995-CCL-2026-B)

MARTE A. MARTINEZ,
Appellant,

V.

CITY OF LOS FRESNOS, TEXAS,
Appellee,

on appeal to this Court from Cameron County, Texas

****

JUDGMENT

On appeal from the County Court at Law No.2 of Cameron County, Texas, from a judgment signed November 13, 1996. Opinion by Justice J. Bonner Dorsey. Do not publish. Tex. R. App. P. 47.3(b).

THIS CAUSE was submitted to the Court on January 21, 1998, on oral argument, the record, and briefs. These having been examined and fully considered, it is the opinion of the Court that there was no error in the judgment of the court below, and said judgment is hereby AFFIRMED against appellant, MARTE A. MARTINEZ.

Costs of the appeal are adjudged against appellant, Marte A. Martinez. It is further ordered that this decision be certified below for observance.

****

CATHY WILBORN, CLERK

APPENDIX C

OFFICIAL NOTICE
COURT OF APPEALS
13TH JUDICIAL DISTRICT

August 6, 1998

RE: Case No. 13-97-00003-CV

Style: Martinez, Marte A. v. City of Los Fresnos, Texas

The appellant's motion for rehearing was overruled by this Court on this day.

T. C. Case # 1995-CCL-2026-B

CATHY WILBORN, CLERK

13TH COURT OF APPEALS
10TH FLOOR
NUECES COUNTY COURTHOUSE
CORPUS CHRISTI, TEXAS 78401

MAIL TO:

Franklin T. Graham, Jr.
Attorney at Law
2205 E. Los Ebanos Blvd.
Brownsville, TX 78521

APPENDIX D

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

November 05, 1999

Mr. Franklin T. Graham, Jr.
2205 E. Los Ebanos Blvd.
Brownsville, TX 78521

Mr. Rene B. Gonzalez
P. O. Box 5134
Brownsville, TX 78523-5134

RE: Case Number 98-0849
Court of Appeals Number: 13-97-00003-CV
Trial Court Number: 95-CCL-2026-B

Style: MARTE A. MARTINEZ v. CITY OF LOS FRESNOS, TEXAS

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above styled case.

Sincerely,

John T. Adams, Clerk

by /S/
Matthew D. Melton, Deputy

cc: Mr. Joe G. Rivera
Ms. Cathy Wilborn, Clerk

APPENDIX E

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512) 463-1312

December 31, 1998

Mr. Franklin T. Graham, Jr.
Law Offices of Franklin T. Graham, Jr.
2205 E. Los Ebanos Blvd.
Brownsville, TX 78521

Mr. Rene B. Gonzalez
P. O. Box 5134
Brownsville, TX 78523-5134

RE: Case Number 98-0849
Court of Appeals Number: 13-97-00003-CV
Trial Court Number: 95-CCL-2026-B

Style: MARTE A. MARTINEZ v. CITY OF LOS FRESNOS, TEXAS

Dear Counsel:

Today, the Supreme Court of Texas overruled the motion for rehearing in the above styled petition for review.

Sincerely,

John T. Adams, Clerk

By /S/

Matthew D. Melton, Deputy

cc: Mr. Joe G. Rivera
Ms. Cathy Wilborn, Clerk

APPENDIX F

IN THE COUNTY COURT AT LAW NO. 2

OF CAMERON COUNTY, TEXAS

CITY OF LOS FRESNOS, TEXAS

VS.

MARTE A. MARTINEZ

NO. 95-CCL-2026-B

AMENDED JUDGMENT

I.

BE IT REMEMBERED that on the 26th day of June, 1996, through the procedures set forth in the Property Code of the State of Texas, in the above designated Cause relating to the City of Los Fresnos, Texas vs. Marte A. Martinez, this cause came on regularly for trial in this Court. The Plaintiff, City of Los Fresnos, Texas, condemnor, acting through its City Council and City Manager, and pursuant to resolution number 14-95 of the City of Los Fresnos, Texas, was represented by the Honorable R.B. Hunsaker, and the Defendant, Marte A. Martinez, appeared by and through his attorney of record, the Honorable Franklin T. Graham, Jr. Both parties announced ready for trial, and a jury of six persons were duly accepted, empaneled and sworn.

II.

Prior to the date set for trial, the Court did, pursuant to Plaintiff's Original Petition For Condemnation, which was filed on December 8, 1995, issue its Order Appointing Special Commissioners, and appointed Evelon Dale, Ruby Milum, and Keefe Blasingame, as Special Com-

missioners to determine the value of that property being condemned by the Plaintiff, the City of Los Fresnos, Texas. And the Special Commissioners did make and file herein their SPECIAL COMMISSIONER'S AWARD, on March 13, 1996 making their finding that the Market Value of the Land sought to be condemned by the Plaintiff, the City of Los Fresnos, Texas, was TWENTY SEVEN THOUSAND FIVE HUNDRED ($27,500.00) DOLLARS.

III.

After the presentation of the testimony, evidence, and argument of Counsel, the Courts Charge, together with its Special Issues was submitted to the jury of the 27th day of June, 1996, and the jury returned its special verdict on the 28th day of June, 1996, answering the question as follows:

QUESTION #1

What sum of money if any, do you find from a preponderance of the evidence represents the market value of the property in question?

Answer in Dollars and Cents if any.

We the jury answer: $56,000.00

QUESTION #2

What is the reasonable fee for the necessary service of the attorney for City of Los Fresnos, R.B. Hunsaker, stated in dollars and cents?

Answer: $11,340.00

QUESTION #3

What is the reasonable fee, for the necessary services of the attorney

for Marte A. Martinez, F.T. Graham, stated in dollars and cents?

Answer: $10,500.00

The Court accepted the verdict which was then entered of record, and the Court is of the opinion that judgment should be rendered thereon.

IV.

From the record and the papers filed herein, and on the basis of the jury's verdict this Court finds:

a) That by petition, filed with judge of this Court on December 8, 1995, Plaintiff sought to condemn the following property:

> Seven Acres more, or less, out of block number 206, FRESNOS LAND AND IRRIGATION COMPANYS SUBDIVISION, in Share 22, Espiritu Santo Grant, Cameron County, Texas, particularly described as follows, to-wit:
>
> BEGINNING at an iron pin in the centerline of the Parades Line Road and the East line of Block 206, North 4 degrees 56 minutes East, 321.02 feet from the Southeast corner of Block 206;
>
> THENCE North 84 degrees 55 minutes West, 949.5 feet to a point in the East right-of-way line of the Southern Pacific Railroad;
>
> THENCE South 4 degrees 56 minutes West 321.02 feet along and with the East right-of-way of said railroad to a point for the Southwest corner of this tract;
>
> THENCE South 84 degrees 55 minutes East, 949.5 feet to a

point in the centerline of the Paredes Line Road for the Southeast corner hereof, same being the Southeast corner of Block 206;

THENCE North 4 degrees 56 minutes East, 321.02 feet to the Place of Beginning; CONTAINING 70 acres of land more or less.

(b) That Pursuant to Plaintiff's petition and the Property Code of the State of Texas, the Court appointed Evelon Dale, Ruby Milum, and Keefe Blasingame, Special Commissioners, to assess the amount of compensation and damages to which the Defendant is entitled by reason of the condemnation.

(c) That the Commissioners herein on March 13, 1996, filed their SPECIAL COMMISSIONER'S AWARD finding the value of the property being condemned to have a Market Value of TWENTY SEVEN THOUSAND FIVE HUNDRED ($27,500.00) DOLLARS.

(d) The Defendant filed a timely exception thereto, and caused the Plaintiff to be cited accordingly.

(e) That all proceedings necessary to vest this Court with jurisdiction of the parties and to the subject matter of this Cause have been duly complied with.

(f) That the Plaintiff is legally entitled to condemn the Property and acquire it for the purposes set forth in Plaintiffs' petition.

(g) That the Plaintiff, City of Los Fresnos, had the right to, and shall acquire the right of Marte A. Martinez, the Defendant, upon depositing the sum of FIFTY SIX THOUSAND ($56,000.00) DOLLARS payable to the order of Marte A. Martinez into the registry of the Court, and thereby acquiring Defendant's interest in and to the land herein condemned.

(h) That upon paying the sum of FIFTY SIX THOUSAND ($56,000.00) DOLLARS, plus interest thereon as herein provided, Plaintiff, City of Los Fresnos shall be released and discharged of its constitutional obligation to compensate Defendant for the taking of the above described property rights, and

(i) That the Defendant, Marte A. Martinez have and recover of the Plaintiff the City of Los Fresnos, Texas, his reasonable attorney fees in the amount of TEN THOUSAND FIVE HUNDRED ($10,500.00) DOLLARS.

IT IS THEREFORE ORDERED, ADJUDGED; and DECREED that Plaintiff, City of Los Fresnos, Texas, have and recover of the Defendant, Marte A. Martinez, all of the right, title and interest of Marte A. Martinez in and to the following described property:

Seven Acres more, or less, out of block number 206, FRESNOS LAND AND IRRIGATION COMPANYS SUBDIVISION, in Share 22, Espiritu Santo Grant, Cameron County, Texas, particularly described as follows, to-wit:

BEGINNING at an iron pin in the centerline of the Paredes Line Road and East line of Block 206, North 4 degrees 56 minutes East, 321.02 feet from the Southeast corner of Block 206;

THENCE North 84 degrees 55 minutes West, 949.5 feet to a point in the East right-of-way line of the Southern Pacific Railroad;

THENCE South 4 degrees 56 minutes West 321.02 feet along and with the East right-of-way of said railroad to a point for the Southwest corner of this tract;

THENCE South 84 degrees 55 minutes, East 949.5 feet to a point in the centerline of the Paredes Line Road for the South-

east corner hereof, same being the Southeast corner of Block 206;

THENCE North 4 degrees 56 minutes East, 321.02 feet to the Place of Beginning; CONTAINING 70 acres of land more or less.

upon the payment by the Plaintiff, City of Los Fresnos, Texas, of the sum of FIFTY SIX THOUSAND ($56,000.00) DOLLARS into the registry of this Court to the order of the Defendant Marte A. Martinez.

It is further ORDERED, ADJUDGED, and DECREED that the Plaintiff, the CITY OF LOS FRESNOS, TX., have and recover of the defendant Marte A. Martinez, the sum of ELEVEN THOUSAND THREE HUNDRED FORTY ($11,340.00) DOLLARS, attorney fees as found by the jury herein.

It is further ORDERED, ADJUDGED, and DECREED that the Defendant, Marte A. Martinez have and recover of the Plaintiff, CITY OF LOS FRESNOS, TEXAS, the sum of TEN THOUSAND AND FIVE HUNDRED ($10,500.00) DOLLARS, attorney fees as found by the jury herein.

It is further ORDERED, ADJUDGED, and DECREED that payment of the money judgment as set forth by the CITY OF LOS FRESNOS, TEXAS, into the hands of the Clerk of this Court shall constitute full satisfaction thereof.

The Court Clerk is directed and ordered to pay the amount of this judgment, when tendered by the Plaintiff, to the Defendant Marte A. Martinez.

It is further, ORDERED, ADJUDGED, and DECREED, that should the Plaintiff, CITY OF LOS FRESNOS, TEXAS, fail to pay said referenced sum of FIFTY SIX THOUSAND ($56,000.00) DOLLARS into the registry of this court within TEN (10) days from this

JUDGMENT becoming final, said right to condemn and purchase said property right, shall expire, and Plaintiff, CITY OF LOS FRESNOS, TEXAS, shall have no further interest in said property right, and the property right, and purchase right, as stated in this judgment, shall expire and become void.

All costs herein are ADJUDGED against the party incurring the same.

It is further ORDERED that all of said sums bear interest as provided by law from day hereof until paid.

For all of which let execution issue.

This Amended Judgment is signed and entered this 13th day of November, 1996.

Migdalia Lopez
Presiding Judge

APPENDIX G

IN THE COUNTY COURT AT LAW NO.-I OF

CAMERON COUNTY, TEXAS

City of Los Fresnos, Texas

vs.

Marte A. Martinez

Cause No.95-CCL-02026-B

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice, or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the Court.

In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get and average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of five or more members of the jury. The same five or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than five jurors. If the verdict and all the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the Witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of

these instructions, it will be jury misconduct and it may require another trial by another jury; then all of your time will have been wasted.

The presiding juror or any other juror who observes a violation of the Court's instructions shall immediately war the one who is violating the same and caution the other not to do so again.

DEFINITIONS

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

"PREPONDERANCE OF THE EVIDENCE" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case.

"MARKET VALUE" is the price which the property would bring when it is offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no necessity of buying it.

You are instructed that certain evidence, which has been presented in this trial, was given by a person or persons who qualify as an "expert".

An "EXPERT" is a witness who is allowed to give his or her, opinion on a subject wholly technical or removed from the experience of lay persons.

QUESTIONS

Answer only the questions which you are specifically instructed to answer. Your answers should be in the form as indicated following each Question. When the answer called for is a date, state the month, day and year.

Questions are to be answered in dollars and cents in the amount you so find from a preponderance of the evidence. Your answers to all questions must be based on a preponderance of the evidence and the burden to establish such preponderance is on Defendant.

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

1. to preside during deliberations;

2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;

3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge;

4. to vote on the questions;

5. to write your answers to the questions in the spaces provided; and

6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

After your have retired to consider your verdict, no one has the authority to communicate with you except the bailiff of this Court. You should not discuss this case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or else-

where, please inform the judge of this fact.

When you have answered all questions which your are required to answer under the instructions of the judge, and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtain the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into Court with your verdict.

DATE: June 27, 1995

_____

JUDGE PRESIDING

QUESTION #1

What sum of money if any, do you find from a preponderance of the evidence represents the market value of the property in question.

Answers in Dollars and Cents, if any.

Answer: $56,000.00.

QUESTION #2

What is the reasonable fee for the necessary services of the attorney for City of Los Fresnos, R.B. Hunsaker, stated in dollars and cents.

Answer: $11,340.00

QUESTION #3

What is the reasonable fee for the necessary services of the attorney for Marte A. Martinez, F. T. Graham, stated in dollars and cents.

Answer: $10,500.00

CERTIFICATE

We, the jury, have answered the above and forgoing questions as herein indicated, and herewith returns same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

_____

PRESIDING JUROR

(To be signed by those rendering the verdict if not unanimous.)

_____ _____

_____ _____

_____ _____